

United States Court of Appeals
for the
District of Columbia Circuit



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1908.

No. 1847.

528

**THE CENTRAL NATIONAL BANK OF WASHINGTON
CITY, A CORPORATION, APPELLANT,**

vs.

**THE NATIONAL METROPOLITAN BANK OF
WASHINGTON.**

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED DECEMBER 13, 1907.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1908.

No. 1847.

THE CENTRAL NATIONAL BANK OF WASHINGTON
CITY, A CORPORATION, APPELLANT,

vs.

NATIONAL METROPOLITAN CITIZENS' BANK OF
WASHINGTON, D. C., A CORPORATION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1847.

THE CENTRAL NATIONAL BANK OF WASHINGTON CITY, a Corporation, Appellant,
vs.

THE NATIONAL METROPOLITAN BANK OF WASHINGTON.

a Supreme Court of the District of Columbia.

At Law. No. 48927.

THE CENTRAL NATIONAL BANK OF WASHINGTON CITY, a Corporation, Plaintiff,
vs.

THE NATIONAL METROPOLITAN CITIZENS BANK OF WASHINGTON,
D. C., a Corporation, Defendant.

UNITED STATES OF AMERICA, *District of Columbia*, *ss.*:

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to-wit:

1 *Declaration, &c.*

Filed November 10, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48927.

THE CENTRAL NATIONAL BANK OF WASHINGTON CITY, a Corporation, Plaintiff,
vs.

THE NATIONAL METROPOLITAN CITIZENS BANK OF WASHINGTON,
D. C., a Corporation, Defendant.

The plaintiff, The Central National Bank of Washington City, a corporation duly incorporated and organized under the laws of the United States relating to national banks sues the defendant, The National Metropolitan Citizens Bank of Washington, D. C., likewise a corporation duly incorporated and organized under the laws

of the United States relating to national banks, for money payable by the defendant to the plaintiff.

1. For that heretofore, to-wit, on the 17th day of March, 1905, at the City of Washington, in the District of Columbia, one Wharton E. Lester, by his certain check, by him duly signed, requested and directed this plaintiff, as his banker, to pay to the order of Mrs. A. E. McKnight, by that name, the sum of \$1949.75; and the plaintiff says that thereafter said check was endorsed in the name of Mrs.

A. E. McKnight to the Washington Loan & Trust Company,
2 a corporation, and the Washington Loan & Trust Company thereafter endorsed said check to the defendant, and the defendant thereafter, endorsed the same to the plaintiff: to-wit on the 18th day of March 1905; that at the time of the endorsement of said check by said defendant, and as part of said endorsement, and in order to induce the plaintiff to pay the amount of said check to the defendant, said defendant guaranteed the genuineness of the prior endorsements upon said note, including the endorsement of said Mrs. A. E. McKnight, payee in said check named, and the plaintiff says, that, relying upon the guarantee of said defendant as to the validity of the prior endorsements upon said check, and solely because thereof, it paid to said defendant the amount of said check, to-wit, \$1949.75; but the plaintiff says that said check was never in fact endorsed by said Mrs. A. E. McKnight, payee therein named; and that endorsement thereon of the name of Mrs. A. E. McKnight is not her genuine signature, but the same, was, and is a forgery, whereby plaintiff has lost the amount of said check; and the plaintiff says that no part of said sum of \$1949.75 has been repaid to it by the defendant, though said defendant has been thereunto frequently requested, wherefore the plaintiff claims said sum of \$1949.75, besides costs.

2. For money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff to the defendant; and for work done and materials provided by the plaintiff for the defendant at its request; and for money lent by the plaintiff to the defendant; and for money paid by the plaintiff for the defendant at its request; and for money received by the defendant for the use of the plaintiff; and for money found to be due from the defendant to the plaintiff on accounts stated between them.

And the plaintiff claims \$1949.75, with interest thereon from the 18th day of March 1905, according to the particulars of demand hereto annexed besides costs.

BRANDENBURG & BRANDENBURG,
A. A. BIRNEY, *Attorneys for Plaintiff.*

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

BRANDENBURG & BRANDENBURG,
A. A. BIRNEY, *Attorneys for Plaintiff.*

Particulars of Demand.

The National Metropolitan Citizens Bank of Washington, D. C., to
The Central National Bank of Washington City, Dr.

To the sum of \$1949.75, being amount of check, paid by The
Central National Bank of Washington City to said National Metro-
politan Citizens Bank of Washington, D. C., upon the fol-
4 lowing check:

No. 2769. WASHINGTON, D. C., Mar. 17th, 1905.

The Central Bank of Washington City, pay to the order of Mrs.
A. E. McKnight, Nineteen Hundred Forty nine 75/100 Dollars.
\$1949.75.

(Signed)

WHARTON E. LESTER.

And endorsed as follows:

"Mrs. A. E. McKnight.

Pay to Nat. Metropolitan Citizens Bank,

Washington, D. C., or order,

All prior endorsements guaranteed.

The Washington Loan & Trust Co.,

Washington, D. C.

Andrew Parker, Treasurer.

National Metropolitan Citizens Bank

of Washington, D. C.,

Mar. 18, 1905.

Prior endorsements guaranteed."

With interest on said amount from March 18, 1905.

DISTRICT OF COLUMBIA, ss:

Clarence F. Norment upon oath says that he is the President of
The Central National Bank of Washington City, a corporation duly
incorporated and organized under the laws of the United States re-
lating to national banks, named as plaintiff in the declaration hereto
annexed, wherein The National Metropolitan Citizens Bank of Wash-
ington, D. C., also a corporation duly incorporated and organized
under the laws of the United States relating to national banks,
5 is named as defendant; said declaration is hereby referred to
and made a part hereof; that as President of the Plaintiff
corporation he is personally cognizant of the transactions upon
which the plaintiff's cause of action in the said declaration, and
against said defendant, is based. Affiant says that, on to-wit, the
17th day of March 1905, one Wharton E. Lester, a depositor in the
plaintiff bank, by his certain check, by him duly signed, requested
and directed the plaintiff, as his banker, to pay the sum of \$1949.75
to the order of one Mrs. A. E. McKnight, by that name, which said
Mrs. A. E. McKnight was and is a resident of the City of Washing-

ton, District aforesaid, and the owner of a certain parcel of land located in said city and known as lot numbered 9 in Square numbered 180; that thereupon said check was endorsed, in that the name "Mrs. A. E. McKnight" was written on said check, and said check was delivered to the Washington Loan & Trust Company, a banking corporation, which cashed the same; and thereafter the Washington Loan & Trust Company endorsed said check to the defendant, and the defendant, on the 18th day of March 1905, endorsed the same to the plaintiff, and requested the plaintiff to pay the same; that at the time of the endorsement of said check by said defendant, and as part of said endorsement, and in order to induce the plaintiff to pay the amount of said check to the defendant, said defendant guaranteed the prior endorsements upon said check, including the endorsement of said Mrs. A. E. McKnight, payee in said check named, as more fully appears in the particulars of demand attached hereto and made part hereof; that the plaintiff relying upon the guarantee of said defendant as to the validity to the prior
6 endorsements upon said check including that of the payee therein named, and solely because thereof, paid to said defendant, the amount of said check, to wit, \$1949.75, on said 18th day of March 1905; that thereafter the plaintiff learned, and affiant now says, that said check was never in fact endorsed by said Mrs. A. E. McKnight, payee therein named; and that the endorsement of her name thereon is not the genuine signature of the said Mrs. A. E. McKnight, but the same was and is a forgery; and was written thereon by one Eulalie A. Puckett, without right, and without the authority of said payee in said check named, that said depositor repudiated said check and declined to allow same to be charged against his account by said plaintiff; that by reason of said facts the plaintiff has lost the amount of said check, being the amount paid to said defendant, that no part of said sum of \$1949.75 has been repaid to the plaintiff by the defendant, though said defendant has been thereunto frequently requested; that said plaintiff immediately, and on the same day it first had knowledge that said endorsement was forged, notified the defendant of that fact and demanded of it the repayment of said sum of money so paid to it; and by the reason of the premises the plaintiff corporation is justly entitled to recover from said defendant the sum of \$1949.75, with interest thereon from the 18th day of March, 1905, as is in said declaration and particulars of demand claimed, exclusive of all set-offs and just grounds of defense.

CLARENCE F. NORMENT.

Subscribed and sworn to before me this ninth day of
7 November 1906.

[SEAL.]

EARLE B. SWETLAND,
Notary Public, D. C.

Pleas.

Filed December 13, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48927.

THE CENTRAL NATIONAL BANK OF WASHINGTON, Plaintiff,
vs.

THE NATIONAL METROPOLITAN CITIZENS BANK OF WASHINGTON,
Defendant.

For Pleas to the Plaintiff's Declaration the defendant says:

First. That it is not indebted as alleged.

Second. That it never promised as alleged.

JOHN B. LARNER,
Attorney for Defendant.

Affidavit.

DISTRICT OF COLUMBIA, *ss.*:

E. Southard Parker being first duly sworn deposes and says that he is the President of The National Metropolitan Bank, the defendant named in the declaration, by the designation of The
8 National Metropolitan Citizens Bank, the said National Metropolitan Citizens Bank having, by authority of Law, changed its name to that of "The National Metropolitan Bank of Washington;" the defendant denies the right of the plaintiff to recover the whole or any part of the amount claimed in the declaration, and sets up as its defense to any such claim the following facts, which it is credibly informed and believes are true, and which it expects to prove at the trial of this cause: The maker of the check sued on in the declaration, Wharton E. Lester, is and was for sometime prior to the 17th day of March 1905, a member of the Bar of the Supreme Court of the District of Columbia, and for many years has been engaged in the active practice of the Law in the City of Washington, D. C., and in addition thereto was at that time and long prior thereto a man of good business qualifications, and well versed in the methods of loaning money, and possessed of much caution in the transaction of business; that some time prior to the said 17th day of March 1905, the said Wharton E. Lester, made the acquaintance of a woman, who was introduced to him by the name of and as being Mrs. A. E. McKnight; and growing out of certain business relations between the said McKnight and himself, he became indebted to or agreed to loan to her a certain sum of money. In pursuance of such arrangement he, the said Lester, gave to the said A. E. McKnight, his check for \$1949.75, dated on the 17th day of March 1905, pay-

able to her order, and drawn on The Central National Bank of Washington, being the check described in the declaration. Affiant says that he is credibly informed and believes, and expects to prove at the trial of this case that the said A. E. McKnight and the person to whom the said Lester delivered said check was the same person to whom he agreed to loan or pay said money, and that she was not known to him by any other name; and that when he so delivered the said check he delivered it to the person with whom he had had his business relations; and said person being the person the said Lester was dealing with by the name of A. E. McKnight, was authorized by him, by that designation, to receive the money on said check from the drawee thereof, The Central National Bank, the plaintiff herein; that on receiving the said check, from the said Lester, the said McKnight presented the same to The Washington Loan & Trust Company of the City of Washington, and after identification by one R. J. Marshal, a real estate broker well known to said Company & in business circles in Washington, the amount thereof was paid to the said McKnight by the said Trust Company; that in the usual course of business the said Trust Company deposited the said check with the defendant, after guaranteeing the signature thereon of the said McKnight, for collection, and this defendant after guaranteeing all previous endorsements presented said check to the drawee, the plaintiff herein, and the full amount thereof was paid to the defendant, and credited to the account of the said Trust Company.

Affiant denies that the name of the said A. E. McKnight was forged on the back of said check, but that the endorsement thereon was made by the identical person to whom the maker thereof had delivered said check and to whom he desired it paid.

Affiant says that if the said Lester desired the amount of said check to be paid to any other person than the one to whom it was delivered, he was so negligent and careless in the issuance of said check that he put it within the power of the party receiving the same to deceive the public, by issuing his check and thereby identifying the holder thereof as the real owner of the check and entitled to the proceeds, and the payment thereof was made, in the first instance, by The Washington Loan & Trust Company, on account of the credit which the said Lester's signature gave to the check.

E. SOUTHDARD PARKER.

Subscribed and sworn to before me this 12th day of December 1906.

[SEAL.]

ALFRED B. BRIGGS,
Notary Public.

Joiner of Issue.

Filed January 7, 1907.

In the Supreme Court of the District of Columbia.

No. 48927. Law.

THE CENTRAL NATIONAL BANK OF WASHINGTON CITY, a Corporation,
Plaintiff,*vs.*THE NATIONAL METROPOLITAN CITIZENS BANK OF WASHINGTON,
D. C., a Corporation, Defendant.

11 The plaintiff joins issue on the defendant's pleas.

BRANDENBURG & BRANDENBURG,
A. A. BIRNEY,*Attorneys for Plaintiff.*

Supreme Court of the District of Columbia.

THURSDAY, October 3, 1907.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * *

At Law. No. 48927.

THE CENTRAL NATIONAL BANK OF WASHINGTON CITY, a Corporation, Pl't'f,

*vs.*THE NATIONAL METROPOLITAN CITIZENS BANK OF WASHINGTON,
D. C., a Corporation, Def't.

Now come here as well the plaintiff by its Attorneys Messrs. Brandenburg and Birney, as the defendant by its Attorneys Messrs. Mattingly and Larner; whereupon the plaintiff moves the Court for leave to substitute the name of The National Metropolitan Bank of Washington in place of the National Metropolitan Citizens Bank of Washington, D. C. which is granted; thereupon comes a jury of good and lawful men of this District, to wit:

12 John R. Muir,	Alexander S. Clark,
David Moran,	Charles B. Caywood,
Arthur T. Traylor,	Rogers A. Lewis,
Joseph C. Auth,	Joseph L. Vaughn,
John P. Robertson,	John S. Cooper,
Nathan Cowsill,	Frank D. Evans,

who being duly sworn to try the issue joined herein, after the case is given them in charge on their oath say they find said issue in favor of the defendant.

WEDNESDAY, October 9th, 1907.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

At Law. 48927.

THE CENTRAL NATIONAL BANK OF WASHINGTON CITY, a Corporation, Pl't'f,
vs.

THE NATIONAL METROPOLITAN BANK OF WASHINGTON, Def't.

The time within which to move for a new trial having expired judgment on verdict is ordered. Therefore it is considered that the plaintiff take nothing by its suit, and that the defendant go thereof without day, and recover against the plaintiff the costs of its defense, to be taxed by the Clerk, and have execution thereof.

Memoranda.

October 10, 1907.—Appeal by Plaintiff and bond fixed at \$100.

October 22, 1907.—Bill of Exceptions submitted to Court.

November 14, 1907.—Appeal bond,—filed.

Time to file record in Court of Appeals extended to and including December 14, 1907.

13 Supreme Court of the District of Columbia.

WEDNESDAY, November 20, 1907.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

At Law. No. 48927.

CENTRAL NATIONAL BANK, Pl't'f,
vs.

NATIONAL METROPOLITAN BANK, Def't.

Now comes here the plaintiff by its Attorneys and prays the Court to sign, seal and make part of the record, its bill of exceptions taken during the trial of this cause (heretofore submitted) now for then, which is accordingly done.

Bill of Exceptions.

Filed November 20, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 48927.

CENTRAL NATIONAL BANK, Plaintiff,
vs.

NATIONAL METROPOLITAN BANK, Defendant.

Be it remembered that on the trial of this cause, the plaintiff, to maintain the issue on its part joined, produced a bank check, which with its indorsements, is in the following words and figures:

"No. 2769.

WASHINGTON, D. C., Mar. 17", 1905.

The Central National Bank of Washington City, pay to the order of Mrs. A. E. McKnight, Nineteen Hundred Forty Nine 75/100 Dollars.

\$1949.75.

(Signed)

WHARTON E. LESTER.

And indorsed as follows:

"Mrs. A. E. McKnight."

"Pay to Nat. Metropolitan Citizens Bank,

Washington, D. C., or order,

All prior indorsements guaranteed.

The Washington Loan & Trust Co.,

Washington, D. C.,

Andrew Parker, Treasurer."

"National Metropolitan Citizens Bank

of Washington, D. C.,

Mar. 18, 1905.

Prior endorsements guaranteed."

and by its cashier, ALBERT B. RUFF, who was duly sworn as a witness in its behalf, gave evidence tending to prove that Wharton E. Lester, a member of the Bar of this Court, the maker thereof, was at the date of the check a depositor with the plaintiff bank; that the signature thereto is the genuine signature of said Lester; that the indorsement of the National Metropolitan Citizens Bank is the genuine indorsement of the defendant; that said check was received by it in the usual course of business from the defendant bank through the Clearing House of Washington City and was paid by it to the defendant whose name was then the National Metropolitan Citizens Bank of Washington, on the faith of the said indorsement by the defendant, without regard to the prior indorsements thereon, and charged to the account of the said Lester; that thereafter, the maker of said check, the said Lester advised the plaintiff that the indorsement of the name of "Mrs. A. E. McKnight" on said check was a forgery, and demanded of the plaintiff the amount thereof which had previously been charged to his account by the plaintiff; that acting upon such demand, it repaid to the said Lester, the amount of said check in currency; that the plaintiff thereupon forthwith made demand upon the defendant under its indorsement guaranteeing the prior indorsements on said check for re-payment thereof, which re-payment was refused. And the said check, with its indorsements, was thereupon offered in evidence, and read to the jury.

Thereupon, further to prove the issue joined on its behalf, the plaintiff called as a witness in its behalf, Mrs. A. E. McKNIGHT, who being sworn, testified that her name was as given; that she resides in the City of Washington, and knows of no other person of her name residing in said city, or elsewhere, and the witness being then shown the check in evidence, testified that the indorsement of

her name thereon was not made by her, or by her authority, or with her knowledge or consent; that she had never seen the check until at the time of the trial of a certain Miss Puckett for the forgery of said indorsement, of which crime she had been convicted; that she had only a slight acquaintance with the said Puckett, and
16 did not know the said Lester.

Thereupon the plaintiff, to further maintain the issue on its part joined, called as a witness, RICHARD J. MARSHALL, who testified that he is a real estate and loan broker, and has been acquainted with Mr. Wharton E. Lester some years, and thereupon the witness was asked by counsel for plaintiff with reference to said check the following questions:

Q. "Where did you first see this check?" A. "At the office of Mr. Wharton E. Lester."

Q. "Did you witness the indorsement of the name of Mrs. A. E. McKnight on this check?" A. "Yes, I saw that name written by Eulalie Puckett, a woman I at that time supposed to be Mrs. McKnight."

Said witness further testified that the indorsement was made at the office of the Washington Loan and Trust Company, by Miss Puckett, which Company, at the request of said Puckett, cashed said check and gave her the money thereon; that he identified Mrs. Puckett at the office of the Trust Company to said Company as Mrs. McKnight; that said Puckett was afterward convicted of the forgery of said indorsement, and is now in the penitentiary; that when he identified her at the time of the cashing of said check, he supposed her to be Mrs. A. E. McKnight.

And thereupon counsel for the defendant on cross examination asked the witness the following questions:

Q. "What transpired in Lester's office when the check was given?"

17 To which question counsel for plaintiff objected on the ground that it was immaterial what transpired at the office of Mr. Lester and that Mr. Lester not being a party to the cause, it was not competent as between the plaintiff and the defendant guarantor of the indorsements of said check, that testimony should be given of such circumstances; thereupon the court overruled the objection, to which ruling counsel for the plaintiff at the time excepted, and such exception was duly noted by the court. Thereupon the witness answered amongst other things

"Lester gave me the check in his office in her presence and got a note for \$2000 and a deed of trust; he dealt with her as Mrs. A. E. McKnight; I took the woman to the bank, identified her and she got the money."

Counsel for defendant asked the witness to state what negotiations relating to the giving of the check he had had with Lester at interviews prior to and distant from the interview at which the check was given; to which plaintiff's counsel objected and the court then stated

"While the direct examination has introduced part of what transpired at the interview at which the check was given, and there-

" fore entitles the cross examiner to elicit the remainder of that particular interview, yet the direct examination has in no manner touched upon or brought forward the interviews now asked for, and

18 " for that reason they are not the subjects of cross examination; if the defendant desires to offer them, they must be

" offered in the defense; for that reason the objection is sustained."

The witness testified that at the time of giving the check, Mr. Lester was given a promissory note for \$2,000 and a deed of trust on real estate to secure the payment of the same. The witness being thereupon asked by counsel for defendant to explain how it was that the check was less than the sum of \$2,000, mentioned by him, testified that the difference between the check and the note was represented by the expenses for the examination of title to the real estate security, and possible other expenses which he did not then recall, and that Mr. Lester got no part of that difference, that the said check was delivered by the said Lester to him, the witness, in the presence of the said Puckett. The witness was then asked if at the said interview Mr. Lester had dealt with the said Puckett as Mrs. A. E. McKnight, and he answered in the affirmative.

The plaintiff then rested whereupon counsel for the defendant moved the court to instruct the jury to return a verdict for the defendant, and after argument thereof by counsel the court indicated that it was about to grant said motion and had announced the reasons for it; whereupon counsel for the plaintiff moved the court to re-open the plaintiff's case in order to call to the stand as a witness, Mr. Wharton E. Lester, who had been present at all times during the trial in conference with plaintiff's attorneys at counsel's table; and stated to the court that they had considered that the proof already

19 offered by them had made a *prima facie* case in favor of the plaintiff, and in that belief they thought they were confirmed by the ruling of the court refusing to allow the witness Mar-

shall to testify on cross examination concerning the negotiations which led up to the giving of the check by Lester, and particularly by the court using an expression which indicated to their minds that he thought that such evidence was only proper as affirmative defense or else in rebuttal, and to that extent they were misled by the court's ruling, into believing that the court viewed the testimony as they did, and that in reliance upon these views they had not called Mr. Lester as a witness in chief, and were now taken by surprise. To which the court replied that "it had used no expression which could have misled counsel and had used no expression which indicated that the court thought that such evidence was only proper as affirmative defense or else in rebuttal;" "that as announced at the time, the ruling was a distinct application of the rule for bidding cross examination upon a subject not introduced by the direct examination"; wherupon Mr. Lester took the floor and on behalf of plaintiff engaged in the discussion. Counsel for plaintiff then offered to state to the court in the presence of the jury what the said Lester would testify if permitted, but the Justice presiding refused to permit the counsel to state what such testimony of the pro-

posed witness would be, but inquired of counsel whether he thought that his point was sufficiently saved for review by the refusal; to which counsel replied in the affirmative; the court then further stated that no matter what the testimony of Mr. Lester might

20 be, the circumstances did not permit re-opening the case to hear it. The court then refused to re-open the plaintiff's case

to permit the said Lester to be called as a witness, or to testify; to which rulings the counsel for the plaintiff severally excepted, on the ground that such refusal of the court to allow the case to be so reopened, and to permit the said statement to be made by counsel as to what they would show by the witness proposed, and his refusal to permit the said Lester to testify, was unreasonable, and an abuse of his discretion in the premises, and such exceptions were then and there severally noted upon the minutes of the Justice presiding.

In refusing to allow the plaintiff to re-open its case for the purpose of calling Mr. Lester as a witness the court took into consideration, amongst other things, the following which are facts: this case was at the foot of the assignment for trial on the day it was called; counsel for the defendant requested that the trial be postponed until the following Monday, stating that he was not aware it was on the assignment, and was not prepared to try this case; that he was prepared to try the case immediately preceding this, which cause had been continued; that counsel for the plaintiff objected to any postponement, alleging as the ground of their objection that "Mr. Lester

"was a necessary witness for plaintiff in the cause and he would be "engaged as counsel in another court on the following Monday and "could not be present here;" Mr. Lester had sat at counsel's table

21 continuously throughout the trial, in conference with plaintiff's counsel; at the conclusion of plaintiff's evidence, Mr.

Lester and counsel for plaintiff engaged in a consultation before making formal announcement that the plaintiff rested, and the court believed that it was upon this very subject of calling Mr. Lester as a witness; the application to call Lester was not made until the motion to direct a verdict for the defendant had been submitted to the court, and the court had announced his reasons for granting it, and was on the point of formally granting it. Counsel for plaintiff in opening the case to the jury, detailed none of the facts as to the last endorser of the check and that the prior endorsement of Mrs. McKnight had been forged. Counsel for defendant in his opening statement stated the defense to be that Mr. Lester had loaned the woman who personated Mrs. McKnight, the payee of the check, \$2,000. on a note secured by deed of trust on real estate; that Mr. Lester had dealt with her as Mrs. McKnight; that she was the woman whom he intended should receive the money on the check and was the woman to whom the money had been paid; that under the true facts of the case, the jury would have but little to do, as he assumed the court would instruct them to find a verdict for the defendant.

The court thereupon instructed the jury that the evidence conclusively established that Mr. Lester intended that the woman, who had endorsed the check in the name "Mrs. A. E. McKnight" should cash

22 the check and should get the money; in short, that the endorsement on the back of the check of the name "Mrs. A. E.

McKnight" in fact identified the person whom Mr. Lester intended to get the money, and that the person who got the money was the person whom he intended to get it, and that they should return a verdict for the defendant, to which instructions counsel for the plaintiff then and there duly excepted before the rendering of said verdict, which exception was duly noted by the presiding justice. The jury thereupon, under the instructions of the court, rendered a verdict in favor of the defendant. There was no evidence tending to show who were the parties to the deed of trust aforesaid; and no evidence tending to prove that the witness Mrs. A. E. McKnight was ever the owner of any real estate.

The foregoing is the substance of all the testimony given in the course of the trial of the above entitled cause, and the exceptions above mentioned were severally taken prior to the rendering of said verdict, and were noted by the presiding Justice at the trial on his minutes at the time the same were taken as aforesaid, and at the request of counsel for the plaintiff, this bill of exceptions is by the court signed and sealed this 20th day of November 1907, *nunc pro tunc*, and hereby made a part of the record of this cause.

DAN THEW WRIGHT, *Justice.* [SEAL.]

23 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 22, both inclusive, to be a true and correct transcript of the record according to Rule Five (5) of the Court of Appeals of the District of Columbia, in Cause No. 48927, At Law, wherein the Central National Bank of Washington City, a Corporation is Plaintiff, and The National Metropolitan Citizens Bank of Washington, D. C., a corporation is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 11th day of December, A. D. 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1847. The Central National Bank of Washington City, a corporation, appellant, vs. The National Metropolitan Bank of Washington. Court of Appeals, District of Columbia. Filed Dec. 13, 1907. Henry W. Hodges, Clerk.